

Issue Paper

Marijuana Packaging and Labeling Rules

Date: February 7, 2018

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) for changes to packaging and labeling rules in Chapter 314-55 WAC.

Why is rule making necessary?

The WSLCB has received a lot of feedback from industry members, the public, staff, and other agency members regarding concerns or changes needed with packaging, labeling, warning statements, and other related rules. Industry members and others have stated that labeling requirements are too onerous, while others have stated that the labels are difficult to read, do not contain desired information that would better inform a consumer or member of the public, or are confusing. Additionally, we recognize that packaging and labeling rules, and rules related to warning statements, could be clearer and better organized and that many technical changes are needed to ensure, packaging, labeling, and warning statement rules are effective.

The WSLCB has been engaged in a project to take a global look at packaging and labeling requirements to clarify, streamline, and make necessary changes to rules. The WSLCB convened a work group of industry members, the Department of Health, and the Washington Poison Center over much of 2017 to gather information and receive feedback on packaging and labeling rules requirements. These proposed rules are a product of what was learned from this work group and other states that regulate marijuana, as well as through consumer surveys.

What changes are being proposed?

Amendatory Section. WAC 314-55-105, Packaging and labeling requirements.

Adjustments to packaging requirements include:

- Allowing certain infused solid edible products such as lozenges and capsules and other similar products on a case by case basis to be packaged loosely (not individually wrapped) in a resealable child resistant exterior package.

- Requiring that infused liquid edible products in packages with more than one serving be resealable, though do not have to be child resistant due to challenges with packaging carbonated liquids.
- Only infused liquid edibles in packages containing a single serving may be packaged with a non-resealable closure, such as a crown-style cap.

Streamlining and paring down of warning statements to ensure critical information is communicated effectively while reducing pressure on label “real estate.”

Removal of harvest date, manufactured date, and best by date from required information on labels. This information may still be placed on the label as an option, but is proposed to be removed as a requirement.

Removal of the retailer business/trade name and UBI on label requirements in anticipation of the passage of legislation that will remove it from required information on labels in statute. Producers and processors business/trade names and UBI numbers must still be listed on the label.

Changing the UBI requirement to the nine-digit number rather than the sixteen-digit UBI number.

Removal of all accompanying material requirements except for pesticides information to reduce label crowding issues seen by licensees putting it on the label. Accompanying materials may be given to consumers via electronic format, including using a url or QR code on the label. The WSLCB is working with DOH to explore potential signage requirements for other warning statements not on the label at retail locations separately, similar to requirements for liquor licensees.

Enhanced definition providing additional clarity for what is considered “especially appealing to children.” Creation of a new definition for the term “cartoon.”

General improvements to organization of the rule to enhance clarity.

Amendatory Section. WAC 314-55-106, Marijuana warning symbol requirement.

New provisions are added to propose the adoption of a universal symbol for marijuana and marijuana products, similar to the universal symbol requirements in Colorado and Oregon. The universal symbol is proposed to be required on all products on the front or principal display panel to ensure that a person viewing a package is notified that the product is or contains marijuana. Minimum size requirements similar to the size requirements for the “Not for Kids” warning symbol are included.



Washington State
Liquor and Cannabis Board

Date: February 7, 2018

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Joanna Eide, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Peter Antolin, Agency Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Karen McCall, Agency Rules Coordinator

Subject: Approval for filing proposed rules (CR 102) related to marijuana packaging and labeling.

The WSLCB has been engaged in a project to take a global look at packaging and labeling requirements to clarify, streamline, and make necessary changes to rules. The WSLCB convened a work group of industry members, the Department of Health, and the Washington Poison Center over much of 2017 to gather information and receive feedback on packaging and labeling rules requirements. These proposed rules are a product of what was learned from this work group as well as through consumer surveys.

Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on these rule was presented at the Board meeting on February 7, 2018, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

January 11, 2017	Board approved filing the pre-proposal statement of inquiry (CR 101)
February 7, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)
February 21, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
March 21, 2018	Public Hearing
March 21, 2018	End of written comment period
April 4, 2018	Board is asked to adopt rules

April 4, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
April 4, 2018	Agency files adopted rules with the Code Reviser (CR 103)
April 4, 2019	Rules are effective. The WSLCB is proposing a delayed effective date for these rules

Approve Disapprove _____
Jane Rushford, Chair _____
Date

Approve Disapprove _____
Ollie Garrett, Board Member _____
Date

Approve Disapprove _____
Russ Hauge, Board Member _____
Date

Attachment: Issue Paper

WAC 314-55-105 Packaging and labeling requirements. (1) ~~((All usable marijuana and marijuana-infused products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.~~

~~(2))~~ **Packaging requirements.**

(a) General packaging requirements applying to all marijuana products. Any container or packaging containing usable marijuana, marijuana concentrates, or marijuana-infused products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product.

~~((3) Upon the request of a retail customer, a retailer must disclose the name of the certified third party testing lab and results of the required quality assurance test for any usable marijuana, marijuana concentrate, or marijuana-infused product the customer is considering purchasing.~~

~~(4) Usable marijuana, marijuana concentrates, and marijuana-infused products must not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.~~

~~(5) The certified third party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.~~

~~(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:~~

~~(a) Lot number;~~

~~(b) UBI number of the producer; and~~

~~(c) Weight of the product.~~

~~(7) Marijuana-infused products and marijuana concentrates meant to be eaten, swallowed, or inhaled, must be packaged in))~~ **(b) Additional product-specific packaging requirements.** The following product-specific packaging requirements apply to each of the following product types in addition to the packaging requirements provided in (a) of this subsection:

(i) Marijuana-infused products general requirements.

(A) All marijuana-infused products for oral ingestion must be packaged pursuant to the following requirements:

(I) Child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or ((use standards specified in this subsection. Marijuana-infused product in solid or liquid form may be packaged in))

(II) Plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure, except as provided in (b)(i)(A)(III) and (B) of this subsection.

(III) Marijuana-infused products for oral ingestion in liquid form where a single serving is contained with the package may ((also)) be sealed using a metal crown cork style bottle cap. Marijuana-infused products for oral ingestion in liquid form that include more than one serving must be packaged with a resealable closure or cap.

(B) Marijuana-infused solid edible products.

(I) If there is more than one serving of marijuana-infused solid edible products in the package, each serving must be packaged individually in ((childproof)) child resistant packaging ((see WAC 314-55-105(7))) as provided in (b)(i) of this subsection and placed in the outer package except as provided below.

(II) Products such as capsules, lozenges, and similar products approved by the WSLCB on a case-by-case basis may be packaged loosely within a resealing outer package that is child resistant in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act.

(C) Marijuana-infused liquid edible products. ((If there is)) Packages containing more than one serving ((in the package,)) of marijuana-infused liquid edible product must:

(I) Have a resealing cap or closure; and

(II) Include a measuring device ((must be included in)) such as a measuring cap or dropper with the package ((with)) containing the marijuana-infused liquid edible product. Hash marks on the bottle or package do not qualify as a measuring device. ((A measuring cap or dropper must be included in the package with the marijuana infused liquid edible product.

~~(8)~~

~~(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.~~

~~(10))~~ (ii) **Marijuana concentrates.** Marijuana concentrates must be packaged:

(A) In child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or

(B) Plastic four mil or greater in thickness, heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure.

(2) **Labeling requirements.**

(a) **Marijuana and marijuana product labels generally.** The following label requirements apply to all marijuana products:

(i) Usable marijuana, marijuana concentrates, and marijuana-infused products must not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(ii) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

~~((11) All marijuana and marijuana products when sold at retail must include accompanying material that is attached to the package or is given separately to the consumer containing the following warnings:~~

~~(a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";~~

~~(b) "There may be health risks associated with consumption of this product";~~

~~(c) "Should not be used by women that are pregnant or breast feeding";~~

~~(d) "For use only by adults twenty one and older. Keep out of reach of children";~~

~~(e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";~~

~~(f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.~~

~~(12))~~ (iii) All information, warning statements, and language required in this section must not be covered or obscured in any way.

(iv) Labels affixed to the container or package containing marijuana or marijuana products sold at retail must include:

~~((a))~~ (A) The business or trade name and the ~~((sixteen))~~ nine digit Washington state unified business identifier (UBI) number of the licensees that produced ~~((,))~~ and processed ~~((and sold))~~ the marijuana or marijuana products ~~((The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label))~~;

~~((b) Sixteen digit inventory ID number assigned))~~ (B) The unique identifier number generated by the WSLCB's traceability system. This must be the same number that appears on the transport manifest;

~~((e))~~ (C) If more than one serving is in a package, the label must prominently display the number of servings in the package and the amount of product per serving;

(D) Net weight in ounces and grams or volume as ~~((appropriate;~~

~~(d) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to infused products; and~~

~~(e) If solvents were used, statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.~~

~~(f) Warnings that state: "This product has intoxicating effects and may be habit forming";~~

~~(g) Statement that "This product may be unlawful outside of Washington state";~~

~~(h) The WSLCB may create a logo that must be placed on all usable marijuana and marijuana infused products.~~

~~(13) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing usable marijuana, or packaged marijuana mix sold at retail must include:~~

~~(a) Concentration of THC ~~(())~~ applicable;~~

(E) THC concentration (delta-9 tetrahydrocannabinol) listed as total THC and activated THC-A ~~((+))~~ and CBD ~~((+))~~ concentration (cannabidiol) listed as total CBD and activated CBD-A ~~((+))~~;

(v) Labels of usable marijuana and marijuana products sold at retail in the state of Washington must not contain any statement, depiction, or illustration that:

(A) Is false or misleading;

(B) Promotes over consumption;

(C) Represents the use of marijuana has curative or therapeutic effects;

(D) Depicts a child or other person under legal age consuming marijuana, or includes:

(I) Objects such as toys, characters suggesting the presence of a child, or any other depiction or illustration designed in any manner to be especially appealing to children or other persons under twenty-one years of age; or

(II) Is designed in any manner that is especially appealing to children or other persons under twenty-one years of age.

~~(b) ~~((Date of harvest.~~~~

~~(14))~~ Standard warnings required on all labels. The following warning statements must be included on labels of all marijuana and marijuana products. The warning statements required below must be of a size to be legible and readily visible to a consumer inspecting a package and must not be covered or obscured in any way.

(i) "Warning - May be habit forming";
(ii) "Unlawful outside Washington State";
(iii) "It is illegal to operate a motor vehicle while under the influence of marijuana"; and
(iv) The marijuana universal symbol as provided in WAC 314-55-106.

(c) **Additional product-specific labeling requirements.** In addition to the labeling requirements in subsection ~~((10))~~ (3)(a) and (b) of this section, ~~((labels affixed to the container or package containing marijuana infused products meant to be eaten or swallowed sold at retail must include:~~

- ~~(a) Date manufactured;~~
- ~~(b) Best by date;~~

(e)) the following product-specific labeling requirements apply to each of the following product types and must be present on labels when offered for sale at retail:

(i) **Usable marijuana, including marijuana mix.** The statement "Smoking is hazardous to your health."

(ii) **Marijuana concentrates, marijuana infused extract for inhalation, and infused marijuana mix.**

(A) If solvents were used to create the concentrate or extract, a statement that discloses the type of extraction method, including any solvents or gases used to create the concentrate or extract; and

(B) Any other chemicals or compounds used to produce or were added to the concentrate or extract.

(iii) **Marijuana-infused products** (except for marijuana-infused products for topical application as provided in (c)(iv) of this subsection).

(A) Serving size and the number of servings contained within the unit;

~~((d) Total milligrams of active THC, or Delta 9 and total milligrams of active CBD;~~

(e)) (B) A list of all ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

~~((f) "Caution: When eaten or swallowed, the)) (C) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract; and~~

(D) The following sentence: "CAUTION: Intoxicating effects ((of this drug)) may be delayed by ((two or more)) 2+ hours."

~~((15) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana-infused extract for inhalation, or infused marijuana mix sold at retail must include:~~

- ~~(a) Date manufactured;~~
- ~~(b) Best by date;~~
- ~~(c) Concentration of THC (total Delta 9 and Delta 9 THC A) and CBD (total CBD and activated CBD A).~~

~~(16) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana topicals sold at retail must include:~~

- ~~(a) Date manufactured;~~
- ~~(b) Best by date;~~
- ~~(c) Total milligrams of active tetrahydrocannabinol (THC), or Delta 9 and total milligrams of active CBD.~~

~~(17)~~) (iv) **Marijuana-infused products for topical application.**

(A) The statement "DO NOT EAT" in bold, capital letters; and

(B) A list of all ingredients in descending order of predominance by weight or volume as applicable.

(d) Permitted optional information that may be included on labels.

(i) Harvest date, "best by" date, and manufactured dates are optional information that may be placed on labels.

(ii) Other cannabinoids and terpenes not required to be placed on the label by this section may be included on the label if:

~~((a))~~ (A) The producer or processor has test results from a certified third-party lab to support the claim; and

~~((b))~~ (B) The lab results are made available to the consumer upon request.

(3) Accompanying materials. The following accompanying materials must be provided with a marijuana product or made available to the consumer purchasing marijuana products at retail. A producer or processor may provide this information through an internet link, web address, or QR code on the product label so long as the information particular to that product as required below is maintained and accessible to a consumer for as long as the product is available for sale at retail.

A statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the usable marijuana or the base marijuana used to create the concentrate or the extract added to infused products.

(4) Upon request materials. Upon the request of a retail customer, a retailer must disclose the name of the certified lab that conducted and the results of the required quality assurance tests for any marijuana or marijuana product the customer is purchasing or considering purchasing.

(5) For the purposes of this section, the following definitions apply:

(a) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that satisfies any of the following criteria:

(i) The use of comically exaggerated features;

(ii) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or

(iii) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.

(b) "Especially appealing to children" means a product, label, or advertisement that includes, but is not limited to, the following:

(i) The use of cartoons;

(ii) Bubble-type or other cartoon-like or action font;

(iii) The use of bright colors similar to those used on commercially available products intended for or that target youth or children;

(iv) A design, brand, or name that resembles a noncannabis consumer product of the type that is typically marketed to minors;

(v) Symbols or celebrities that are commonly used to market products to minors;

(vi) Images of minors; or

(vii) Similarities to products or words that refer to products that are commonly associated with minors or marketed to minors.

WAC 314-55-106 Marijuana warning symbol requirement. The following requirements are in addition to the packaging and labeling requirements provided in WAC 314-55-105.

(1) Marijuana-infused products (~~((meant to be eaten or swallowed))~~) for oral ingestion sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol ("warning symbol") created and made available in digital form to licensees without cost by the Washington poison center (WPC). The warning symbol may be found on the WPC's web site.

(a) The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters of an inch in height by one-half of an inch in width; and

(b) The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package, except that a licensee must use a black border around the edges of the white background of the warning symbol image when the label or packaging is also white to ensure visibility of the warning symbol.

~~((+2))~~ (c) Licensees may download the digital warning symbol from the WPC and print stickers, or purchase and use a sticker made available by the WPC, in lieu of incorporating the warning symbol on ~~((its))~~ the label or packaging as required under subsection (1) of this section. If a licensee elects to use a warning symbol sticker, the sticker:

~~((+a))~~ (i) Must meet all requirements of ~~((subsection (1)))~~ (a) and (b) of this ~~((section))~~ subsection; and

~~((+b))~~ (ii) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

(2) All marijuana products sold at retail must be labeled on the principal display panel or front of the product package with the marijuana universal symbol ("universal symbol") created and made available in digital form to licensees without cost by the WSLCB. The digital file for the universal symbol is available on the WSLCB's web site.

(a) The universal symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers that the product is or contains marijuana, but must not be smaller than three-quarters of an inch in height by three-quarters of an inch in width;

(b) The universal symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package; and

(c) Licensees may download the digital universal symbol from the WSLCB's web site and print stickers in lieu of incorporating the universal symbol on the label or packaging as required under (a) and (b) of this subsection. If a licensee elects to use a universal symbol sticker, the sticker:

(i) Must meet all requirements of this section; and

(ii) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

(3) For the purposes of this section, "principal display panel" means the portion(s) of the surface of the immediate container, or of

any outer container or wrapping, which bear(s) the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. "Immediate container" means the external container holding the marijuana product.

Issue Paper

Marijuana Retail License Forfeiture Rules

Date: February 7, 2018

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request approval from the Board to file proposed rules (CR 102) for a new section in Chapter 314-55 WAC for marijuana retail license forfeitures as required by the passage of ESSB 5131 during the 2017 Legislative Session.

Why is rule making necessary?

The Legislature passed ESSB 5131 during the 2017 Legislative Session that directed the WSLCB to create a process for the forfeiture of marijuana retail licenses that are not fully operational and open to the public within a specified period from the date of license issuance, subject to the following restrictions:

- No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and
- The WSLCB must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

Rulemaking is necessary to comply with the directive in ESSB 5131, codified in RCW 69.50.325, and to create the process the WSLCB will use for retail license forfeitures.

This proposed rulemaking is part of a larger rulemaking effort to create and amend rules as needed for 2017 marijuana legislation. A separate CR-102 filing will propose other rule changes needed resulting from 2017 marijuana legislation.

What changes are being proposed?

New Section. WAC 314-55-055, Marijuana retailer license forfeiture.

This new section in chapter 314-55 WAC details the process that the WSLCB will use in carrying out marijuana retail license forfeitures as directed by ESSB 5131 and codified in RCW 69.50.325. A marijuana retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after nine months of issuance of the license or April 23, 2018, whichever is later. The

following criteria is included in the proposed rule to determine whether a marijuana retail license is fully operational:

- The business must be open to the public for a minimum of five hours a day between the hours of 8:00 am and 12:00 midnight, three days a week;
- Posts business hours outside of the premise in the public view; and
- Reports monthly sales from the sale of marijuana products and pays applicable taxes.

The above criteria must be met for a minimum of 20 consecutive weeks within a nine month period for the business to be considered fully operational and open to the public.

A marijuana retailer's license will not be subject to forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensed business to include:

- The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or
- The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

The Board has the sole discretion to grant exceptions to the license forfeiture process if a marijuana retailer licensee has had circumstances occur that are out of their control such as a natural disaster.

Adequate documentation will be required to verify any of the exceptions to license forfeiture in this section. It is the licensee's responsibility to inform the WSLCB if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate.

A retailer that receives notice of license forfeiture under this section from the WSLCB may request an administrative hearing under chapter 34.05 RCW.

N E W S E C T I O N

WAC 314-55-055 Marijuana retailer license forfeiture.

(1) A marijuana retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after nine months of issuance of the license or April 23, 2018, whichever is later. Fully operational means the business meets the following criteria for at least 20 consecutive weeks within a nine month period:

(a) Is open to the public for a minimum of five hours a day between the hours of 8:00 am and 12:00 midnight, three days a week;

(b) Posts business hours outside of the premise in the public view; and

(c) Reports monthly sales from the sale of marijuana products and pays applicable taxes.

(2) (a) A marijuana retailer's license will not be subject to forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensed business to include:

(i) The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or

(ii) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

(b) The Board has the sole discretion to grant exceptions to the license forfeiture process if a marijuana retailer licensee has had circumstances occur that are out of their control such as a natural disaster.

(c) Adequate documentation will be required to verify any of the exceptions to license forfeiture in this section. It is the licensee's responsibility to inform the WSLCB if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate.

(3) A retailer that receives notice of license forfeiture under this section from the WSLCB may request an administrative hearing under chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than twenty days after service of the notice. Requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue S.E., Olympia, WA 98501,

or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98501.



**Washington State
Liquor and Cannabis Board**

Date: February 7, 2018

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Joanna Eide, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Peter Antolin, Agency Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Karen McCall, Agency Rules Coordinator

Subject: **Approval for filing proposed rules (CR 102) related to marijuana retail license forfeitures.**

The Legislature passed ESSB 5131 during the 2017 Legislative Session that directed the WSLCB to create a process for the forfeiture of marijuana retail licenses that are not fully operational and open to the public within a specified period from the date of license issuance. These requirements were codified in RCW 69.50.325. The Board approved the filing of a CR 101 to initiate permanent rulemaking for 2017 marijuana legislation on July 12, 2017. A separate rulemaking for other changes to cannabis rules needed as a result of changes made in the 2017 Legislative Session is underway and will be handled under a separate CR-102.

Process

The Rules Coordinator requests approval to file the proposed rules (CR 102) for the rule making described above. An issue paper on these rule was presented at the Board meeting on February 7, 2018, and is attached to this order.

If approved for filing, the tentative timeline for the rule making process is outlined below:

July 12, 2017	Board approved filing the pre-proposal statement of inquiry (CR 101)
February 7, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)
February 21, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
March 21, 2018	Public Hearing
March 21, 2018	End of written comment period
April 4, 2018	Board is asked to adopt rules



Washington State
Liquor and Cannabis Board

April 4, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
April 4, 2018	Agency files adopted rules with the Code Reviser (CR 103)
May 5, 2018	Rules are effective (31 days after filing)

_____ Approve _____ Disapprove _____
 Jane Rushford, Chair _____
 Date

_____ Approve _____ Disapprove _____
 Ollie Garrett, Board Member _____
 Date

_____ Approve _____ Disapprove _____
 Russ Hauge, Board Member _____
 Date

Attachment: Issue Paper

Issue Paper

Public Records Rules

Date: February 7, 2018

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Washington State Liquor and Cannabis Board (WSLCB) proceed with final rule making and adopt rules changes in Chapter 314-60 and 314-42 WAC related to public records costs needed as a result of the passage of EHB 1595 (2017 c 304) during the 2017 legislative session and a review of Chapter 314-60 WAC.

Why is rule making necessary?

Rule changes are needed to implement changes in law due to the passage of EHB 1595 by the 2017 Legislature. The new provisions in law require the agency to either (1) calculate the actual costs of providing public records to requesters for each request, or, if calculating actual costs would be unduly burdensome, (2) charge up to the default amounts in section 3 of EHB 1595. The WSLCB needs changes to rules for costs for public records in order to continue to assess costs for records when appropriate as the Public Records Act (Chapter 42.56 RCW) requires agencies to establish costs for providing public records in rule. This rulemaking incorporates the default amounts as provided in section 3 of EHB 1595. A Chapter review for Chapter 314-60 was done in conjunction with the changes needed as a result of the passage of EHB 1595 to ensure public records rules are current and well organized. A review of Chapter 314-60 WAC has not occurred since 2009.

Public Comment

What changes are being proposed?

Many changes in this rulemaking are technical in nature aside from the changes to costs information as required by the passage of EHB 1595. Updates to references to the WSLCB are made throughout the chapter, and many organizational updates are included to ensure clarity and understandability of rules related to public records.

Amendatory Section. WAC 314-60-010, Purpose.

Technical changes to the section to update references to the WSLCB.

Amendatory Section. WAC 314-60-015, Agency description – Contact information.

Technical changes to references to the WSLCB. Updates to the description of the jurisdiction of the WSLCB – liquor, marijuana, tobacco, and vapor products – including updated statutory references. Adjustments to the description of divisions of the agency from 6 to 7 and references to organizational charts, as well as updates to location information for agency offices and removal of references to state liquor stores.

New Section. WAC 314-60-025, Public records officer.

Moved provisions related to the public records officer designation to a new section. This section explains the duties of the public records officer, contact information, and how public records and requests are handled as required in Chapter 42.56 WAC (Public Records Act). Updates to contact information and WSLCB website address. Includes references to public records officer designees to ensure that staff in the public records office are clearly delegated certain duties in fulfilling public records requests.

Amendatory Section. WAC 314-60-070, Availability of public records.

Updates and technical changes to ensure rule provisions reflect current agency practices and requirements under Chapter 42.56 WAC (Public Records Act). References to information available to the public on the WSLCB website without a public records request as many records are available immediately and free of any charges on the WSLCB website. Additional technical updates include:

- Updates to the public records inspection hours to reflect current agency practice.
- Updates to the records index information – required under Chapter 42.56 WAC (Public Records Act).
- Updates to website address and references to the WSLCB.

Amendatory Section. WAC 314-60-080, Requests for public records.

- Updates to references to the WSLCB.
- Updated email address for public records requests to reflect current contact information.
- Updated website address.
- Additions related to designees of the public records officer to ensure proper delegated authority to public records office staff.

Amendatory Section. WAC 314-60-085, Processing public records requests.

Technical changes to ensure rules reflect current agency practice for processing public records. This information is required to be in rule under Chapter 42.56 RCW (Public Records Act).

- Updates to listing of exemptions from the disclosure of public records as required under Chapter 42.56 RCW (Public Records Act).

- Additions related to designees of the public records officer to ensure proper delegated authority to public records office staff.
- Updates to provisions relating to how the WSLCB will handle records that are not retrieved by a requestor.
- Technical updates to the process the WSLCB uses for processing public records requests and supplying copies of records in physical or electronic formats. All costs of providing records must be paid by the requestor before receiving records, whether produced in installments or in total.

Amendatory Section. WAC 314-60-090, Costs of providing copies of public records.

Changes to provisions related to costs of providing public records as required due to the passage of EHB 1595 by the 2017 Legislature. Costs provisions must be in agency rule for an agency to be able to charge costs for producing public records under Chapter 42.56 RCW (Public Records Act). The new provisions require the agency to either (1) calculate the actual costs of providing public records to requesters for each request, or, if calculating actual costs would be unduly burdensome, (2) charge up to the default amounts in section 3 of EHB 1595. The Public Records Act (Chapter 42.56 RCW) requires agencies to establish costs for providing public records in rule to be able to assess those costs. Proposed changes adopt costs for providing public records through adapting the costs schedule included in EHB 1595 section 3 (RCW 42.56.120). The rule makes it clear that no costs are assessed for records accessed through the WSLCB's website, unless requested to be provided by other means. The rule also provides an option for a requestor to ask to receive an estimate of the applicable charges for a public records request before any copies are made, and the WSLCB will provide an opportunity for the requestor to revise the request to reduce the number of copies to be made to reduce the charges. The board may require a deposit of up to 10% of the cost of providing copies for a request, including a customized service charge.

Amendatory Section. WAC 314-60-100, Exemptions.

Technical changes to rule provisions to ensure rules are current. Updates to statutory references for exemptions from disclosure for certain records. Removal of provisions that are no longer applicable due to the privatization of liquor after passage of Initiative 1183. Technical changes were made to remove exemptions to disclosure that no longer apply or are already covered by exemptions included in the Public Records Act. Subsection (1) of WAC 314-60-100 states that "requesters should be aware of" other exemptions outside the PRA that restrict availability of records. After reviewing the laws cited in proposed new language of subsections (1)(j) and (k) as filed with the CR-102, the cited sections of the liquor act provided for record-keeping but did not provide an exemption from disclosure of those records that differs from what is provided in the PRA or other

subsections of the proposed rule. For this reason, these subsections were not needed and were removed from the proposed rules prior to adoption.

Amendatory Section. WAC 314-60-110, review of denials of public records requests.

Minor technical changes to update contact information for requests for review of public records request denials. References added to ensure public records officer designees (public records staff) are clearly delegated certain duties.

Repealers.

The WSLCB proposes repealing WAC 314-60-404, Operations and procedure, and WAC 314-60-087, Processing public records requests – Electronic records, as the relevant provisions in those rules are incorporated into other sections in this rule making.

New Section. WAC 314-42-001, Board operations and procedure.

A new section is proposed in Chapter 314-42 WAC, Liquor control board operations, to move provisions related to Board operations that were in Chapter 314-60 (Public records) to a more appropriate location. Technical updates to language were done as part of the proposed changes to ensure provisions are updated.

Attachment: Proposed Rules

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-010 Purpose (~~(Washington state liquor control board)~~). The purposes of this chapter are to:

(1) Describe the organization of the Washington state liquor (control) and cannabis board (~~(LCB)~~) WSLCB;

(2) (~~Ensure that LCB~~) Detail how the WSLCB complies with laws governing the disclosure (release) of public records; and

(3) Explain how an individual or organization (~~can~~) may obtain public records.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-015 Agency description—Contact information (~~(Public records officer)~~). (1)(a) The (~~board~~) Washington state liquor and cannabis board (WSLCB) is an agency created to exercise the police power of the state in administering and enforcing (~~all of the~~) laws and regulations relating to alcoholic beverage control (Title 66 RCW), marijuana (chapter 69.50 RCW), tobacco (chapter 70.155 RCW), and vapor products (chapter 70.345 RCW).

(~~b~~) The board issues licenses (~~to persons who handle liquor~~) relating to liquor, marijuana, tobacco, and vapor products; and collects taxes imposed on liquor (~~; and distributes and sells spirituous liquor~~) and marijuana.

(~~b~~) (~~c~~) The (~~board~~) WSLCB is responsible for enforcing laws preventing access to tobacco products by persons under the age of eighteen years (chapter 70.155 RCW). The board enforces the tobacco tax laws and the department of revenue administers tobacco tax laws (chapters 82.24 and 82.26 RCW).

(2) (~~The "Washington state liquor control board" or "board" pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor with the consent of the senate, for terms of six years that are staggered so that an appointment or reappointment is made every two years. Where appropriate, the term "board" also refers to the staff and employees of the Washington state liquor control board.~~

(3) ~~The board delegates certain administrative functions to an administrative director appointed by the board.~~

(4) The Washington state liquor (~~control~~) and cannabis board is organized into (~~six~~) seven divisions:

(a) (~~The~~) Board administration;

(b) Director's office;

(~~b~~) (~~c~~) Licensing and regulation;

(~~e~~) (~~d~~) Enforcement and education;

(~~d~~) Administrative services;

(~~e~~) Business enterprise; (e) Finance;

(f) Information technology; and

(~~f~~) (~~g~~) Human resources.

~~((5))~~ (3)(a) The administrative offices of the Washington state liquor ~~((control))~~ and cannabis board are located at 3000 Pacific Avenue Southeast, Olympia, Washington 98504-3080.

(b) ~~((LCB))~~ WSLCB staff is also located at~~((~~

~~(i) The distribution center, 4401 East Marginal Way South, Seattle, Washington;~~

~~(ii) State liquor stores in areas throughout the state; and~~

~~(iii)) enforcement offices maintained in major cities throughout the state.~~

~~((c) LCB contracts with individuals to sell liquor on commission. These contract liquor stores are located in areas throughout the state.~~

~~(d) Exact locations of state liquor stores, contract liquor stores,) Enforcement offices((7)) addresses and contact numbers are located on the ((LCB home page at www.liq.wa.gov)) WSLCB's web site at www.lcb.wa.gov.~~

~~((6) Any person wishing to access LCB public records should contact the LCB's public records officer:~~

Public Records Officer
Liquor Control Board
3000 Pacific Avenue Southeast
Olympia, Washington 98504
360-664-1714
Fax 360-664-9689
email publicrecords@liq.wa.gov

~~Information is also available on the LCB web site at www.liq.wa.gov.~~

~~(7) The public records officer will oversee compliance with the act and the implementation of the LCB's rules and regulations regarding release of public records, coordinating the staff of the public records unit and the LCB employees in this regard, and generally coordinating compliance by the LCB with the public records disclosure requirements of chapter 42.56 RCW. The public records officer will provide the "fullest assistance" to requestors; create and maintain for use by the public and LCB officials an index to public records of the LCB; ensure that public records are protected from damage or disorganization; and to prevent public records requests from causing excessive interference with essential functions of the LCB.)~~ (4) An organizational chart is available from the board's public records office which illustrates the general structure of the WSLCB's operations. More information on the construct of the WSLCB is also available on the WSLCB's web site at www.lcb.wa.gov.

NEW SECTION

WAC 314-60-025 Public records officer. (1) The WSLCB public records officer:

(a) Receives all public records requests made to the WSLCB;

(b) Provides "fullest assistance" to persons seeking WSLCB public records;

(c) Oversees the WSLCB's compliance with the Public Records Act, including locating, processing, and releasing records responsive to public records requests;

(d) Creates and maintains an index of certain WSLCB public records, to the extent required by RCW 42.56.070; and

(e) Prevents the fulfillment of public records requests from causing excessive interference with essential functions of the department.

(2) Any person wishing to access WSLCB public records should contact the WSLCB's public records officer or designee at:

Public Records Officer
Liquor and Cannabis Board
3000 Pacific Avenue Southeast
Olympia, Washington 98504
360-664-1693
Fax: 360-664-9689

Email: publicrecords@lcb.wa.gov

Current contact information is also available on the WSLCB web site at www.lcb.wa.gov.

(3) The public records officer may designate one or more WSLCB staff to carry out the responsibilities set forth in subsection (1) of this section; and other staff may process public records requests. Therefore, use of the term public records officer in this chapter may include the public records officer's designee(s) or any other staff assisting in processing public records requests, where indicated by context.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-070 Availability of public records. (1) Many records are available on the WSLCB's web site at www.lcb.wa.gov. Requestors are encouraged to search for and view records on the WSLCB's web site in lieu of or prior to making a public records request. An index of public records is available as provided in subsection (3) of this section.

(2) Requestors are encouraged to contact the public records officer to determine the location and availability of records prior to or at the time of making a public records request.

(3) Hours for inspection of records.

(a) Public records are available for inspection and copying at the main office of the board during normal business hours of the ((LCB)) WSLCB, Monday through Friday, from ((8)) 9:00 a.m. to ((4)) noon and from 1:00 p.m. to 4:30 p.m., excluding state legal holidays.

((+2)) (b) Records must be inspected at the offices of the WSLCB and may not be removed from WSLCB offices. The majority of public records are located at the WSLCB's central office, although some may be located in other locations, including the regional offices.

(4) Records index. ((An)) The WSLCB maintains an index as required under RCW 42.56.070 and updates the index on a biennial basis at minimum. The index of public records is available ((for use by members of the public)) on the WSLCB's web site at www.lcb.wa.gov, including:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases((-));

(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency(~~(-)~~); and

(c) (~~Administrative staff manuals and instructions to staff that affect a member of the public.~~

(d) ~~Planning policies and goals, and interim and final planning decisions.~~

(e) ~~Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others.~~

(f) ~~Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.~~

~~(3)) Declaratory orders issued pursuant to RCW 34.05.240 containing an analysis or decision of substantial importance to the agency in carrying out its duties.~~

(5) Organization of records. The ((LCB)) WSLCB will maintain its records in a reasonably organized manner. The ((LCB)) WSLCB will take reasonable actions to protect records from damage and disorganization. ((A requestor shall not take LCB records from LCB offices without the permission of the public records officer. A variety of records is available on the LCB web site at www.liq.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.))

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-080 ((Making)) Requests for public records. An individual may request a public record orally or in writing. The ((board)) WSLCB encourages ((that)) all public records requests be submitted in writing ((and)). Public records requests may be sent to the WSLCB via email at publicrecords@lcb.wa.gov.

(1) A form for public records requests prescribed by the ((board)) WSLCB is available at its main office and on its web site at www.lcb.wa.gov. ((The)) A written request or ((prescribed)) public records request form ((shall)) must be submitted or presented to the public records officer or designee and may be sent to the WSLCB via email at publicrecords@lcb.wa.gov. The request should include the following information:

(a) The name, organization, mailing address, telephone number(~~(- fax number)~~), and email address of the ((person requesting the record.)) requestor;

(b) The date and time of day ((and calendar date on which the request was received at the main office of the board.)) of the request;

(c) ((A detailed description of the public record being requested.)) Identification of the public records sought, in a form or description adequate for the public records officer to identify and locate the records;

(d) If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as described(~~(-)~~); and

(e) The address where copies of the record are to be mailed or emailed, or notification that the requestor wants to examine the record at the (~~(LCB)~~) WSLCB.

(2) If the public records officer or designee accepts a request other than in writing, he or she will confirm receipt of the information and the substance of the request in writing.

~~((3) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Standard photocopies will be provided at fifteen cents per page. (See WAC 314-60-090.)~~

~~(4) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the board is also a party (or when a request is made by or on behalf of an attorney for a party) the request shall be referred to the assistant attorney general assigned to the board for an appropriate response.)~~

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-085 Processing public records requests. (1) Order of processing public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days (~~(of)~~) after receipt of the request, the public records officer or designee will do one or more of the following:

(a) Provide the records or make the records available for inspection and copying depending on the nature of the request;

(b) If copies are requested and payment of a deposit for copies, if any, is made or terms of payment agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) If no response is received. If the public records officer does not respond in writing within five business days after the day of receipt of the request for disclosure, the requestor should consider contacting the public records officer to ensure that the WSLCB received the request.

(4) **Protecting the rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask

him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

~~((4))~~ **(5) Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part, under chapter 42.56 RCW or as otherwise provided by law. If the ~~((LCB))~~ WSLCB believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

~~((5))~~ **(6) Inspection of records.**

(a) Consistent with other demands, the ~~((LCB))~~ WSLCB shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. ~~((The requestor shall indicate which documents he or she wishes the agency to copy.))~~ If, after inspecting a record or records, the requestor wishes to receive a copy of a particular record or records, he or she should so indicate to the public records officer or designee. Copies will be provided pursuant to subsection (7) of this section.

(b) The requestor must ~~((claim or))~~ review the assembled records within thirty days of the ~~((LCB's))~~ WSLCB's notification to him or her that the records are available for inspection ~~((or copying))~~. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to ~~((claim or))~~ review the records. If the requestor or a representative of the requestor fails to ~~((claim or))~~ review the records within the thirty-day period or make other arrangements, the ~~((LCB))~~ WSLCB may close the request ~~((and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request))~~. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

~~((6))~~ **(7) Providing copies of records.** ~~((After inspection is complete, the public records officer shall make the requested copies or arrange for copying.~~

~~(7))~~ (a) Upon request, the public records officer or designee will provide copies of requested records. Copies may be provided in either hard copy or electronic format, as requested. The cost for copies is set forth in WAC 314-60-090 and costs for copies of records must be paid to the WSLCB prior to delivery of copies of records.

(b) Copies may be mailed or emailed to the requestor, or made available for pickup at the WSLCB's offices, depending on the format of the records and the request of the requestor. If the copies are available for pickup at the WSLCB's offices, the requestor must pay for and pick up the copies within thirty days of the WSLCB's notification to him or her that the copies are available for pickup. The WSLCB will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the WSLCB to make arrangements to pay for and pick up the copies. If the requestor fails to pay

for or pick up the copies within the thirty-day period, or fails to make other arrangements, the WSLCB may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(8) **Electronic records.** The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic format, the public records officer will provide the nonexempt records, or portions of such records that are reasonably locatable, in an electronic format that is used by the WSLCB and is generally commercially available, or in a format that is reasonably translatable from the format in which the WSLCB keeps the record.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection ~~((and copying))~~ or copies of records in installments, if he or she reasonably determines that it would be practical to provide the records in that way. Costs for each installment of copies of records must be paid to the WSLCB prior to delivery of the installment. If, within thirty days, the requestor fails to ~~((inspect the entire set of records or))~~ pay for one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

~~((+8))~~ (10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the ((LCB)) WSLCB has completed ~~((a diligent search for the requested))~~ the records request and made any located nonexempt records available for inspection.

~~((+9))~~ (11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate the closure to the requestor ~~((that the LCB has closed the request))~~.

~~((+10))~~ (12) **Later discovered documents.** If, after the ((LCB)) WSLCB has informed the requestor that it has provided all available records and closed a request, the ((LCB)) WSLCB becomes aware of additional responsive ~~((documents))~~ records existing at the time of the request, it will promptly inform the requestor of the additional ~~((documents))~~ records and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-090 Costs of providing copies of public records. (1) No fee ~~((shall be))~~ is charged for the inspection of public records.

(2) ~~((After the first one hundred free copies, the board charges one or more of the following fees for copies of public records:~~

~~((a) Up to fifteen cents per page for black and white photocopies of a record;~~

~~((b) The actual cost of manuals, blueprints, and other nonprinted materials such as CDs, audio tapes, or video tapes;~~

~~(c) Up to fifteen cents per page for scanning existing WSLCB paper or other nonelectronic records. There will be no charge for emailing electronic records to a requestor, unless a scanning fee applies; and~~

~~(d) The cost of postage, when items are mailed. (See RCW 42.56.070.)~~ The WSLCB does not charge any fee for access to or downloading records posted on its internet web site prior to a request, unless the requestor specifically requests that posted records be provided by other means, such as a printed copy or electronic copies provided by the WSLCB.

(3)(a) The board finds it would be unduly burdensome to calculate the actual costs of providing public records to requestors as the type of request and staff time to copy and provide records vary widely. The board does not have the resources to conduct a study of these costs, and conducting a study would interfere with other essential agency functions. Additionally, through the 2017 legislative process, the public and requestors commented on and were informed of authorized fees and costs, including costs for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(b) The following fee schedule adapted from RCW 42.56.120 applies to physical and electronic copies of public records provided by the WSLCB. Copy charges may be combined to the extent more than one type of charge applies to copies responsive to a particular request.

Public Records Fee Schedule	
Charge:	Record Type:
<u>15 cents/page</u>	<u>Photocopies, printed copies of electronic records when requested by the requestor, or for the use of agency equipment to make photocopies.</u>
<u>10 cents/page</u>	<u>Scanned records, or use of agency equipment for scanning.</u>
<u>5 cents for each 4 electronic files or attachment</u>	<u>Files and attachments loaded and delivered on a digital storage media (CD, DVD, or thumb drive).</u>
<u>10 cents per gigabyte</u>	<u>Records transmitted in electronic format or for use of agency equipment to send records electronically.</u>
<u>Actual cost</u>	<u>Digital storage media or devices.</u>
<u>Actual cost</u>	<u>Any container or envelope used to mail copies.</u>
<u>Actual cost</u>	<u>Postage or delivery charges.</u>

Public Records Fee Schedule	
<u>Actual cost</u>	<u>Customized service charge (in addition to fees for copies - See copying fees above), if the board estimates that the request would require use of information technology expertise to prepare data compilations, or provide customized electronic access when such compilations and customized access services are not used by the agency for other agency purposes. The board will notify such requestor of the customized service charge to be applied, why the charge applies, and an estimate of the cost of the charge, and will allow the requestor to amend the request in order to avoid or reduce the cost of the customized service charge.</u>
Option for Copies:	
<u>Up to \$2 flat fee</u>	<u>As an alternative to the copy charges above, the board may charge a flat fee of up to \$2 for any request when the agency reasonably estimates and documents that the costs are equal to or more than \$2. If applied to the initial installment, additional flat fees will not be charged for subsequent installments.</u>

(4) If the requestor asks the WSLCB to provide a summary of the applicable charges before any copies are made, the WSLCB will provide an estimate and will allow the requestor to revise the request to reduce the number of copies to be made to reduce the charges. The WSLCB may require a deposit of up to ten percent of the cost of providing copies for a request, including a customized service charge.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-100 Exemptions. (1) The Public Records Act (chapter 42.56 RCW) (~~provides that a number of types of documents are~~) exempts a number of types of records from public inspection, production, and copying that the board may assert when responding to a request for public records. In addition, (~~documents~~) records are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by WSLCB for inspection and copying:

(a) **Autopsy, post mortem or medical examiner reports.** Requests for these records should be referred to the agency which originated

the record(s): Coroner's office, medical examiner's office, etc. (RCW 68.50.105)

(b) **Claim file information.** On any industrial insurance claim. (RCW 51.28.070)

(c) **Criminal history reports.** Certain criminal history information concerning nonconviction data is prohibited from disclosure under chapter 10.97 RCW. Law enforcement agency reports should be referred to the agency that originated the report. (RCW 10.97.080)

(d) **Crime victims.** Files and information. (RCW 7.68.140)

(e) (~~Individual purchases.~~ All records whatsoever of the board showing purchases of liquor by any individual or establishment. (RCW 66.16.090)) **Attorney client privileged communications, mediation communications.** Communications protected by RCW 5.60.060(2), 42.56.290 and 7.07.030 exempt from disclosure.

(f) **Medical records and data.** Medical records, drug records, accident victims and other persons to which (~~LCB~~) WSLCB has access. (RCW 42.56.360(2) and chapter 70.02 RCW)

(g) **Social Security numbers.** (RCW 42.56.250(3) and 42 U.S.C. Section 405 (c)(2)(C)(vii)(1))

(h) **Trade secrets.** As defined in RCW 19.108.010, including blueprints, diagrams, drawings, formulas, photos, etc., requested to be held confidential by the affected person. Should be labeled "RESTRICTED TRADE INFORMATION." (RCW 39.10.470(2) and 49.17.200)

(~~(i) Special order requests and records of purchases by any person or persons, including spirits, beer, and wine restaurant licenses. (See RCW 66.16.090.)~~)

(~~j) Financial or proprietary information supplied to the board by a domestic winery, brewery, or microbrewery, acting as its own distributor, or certificate of approval holder with a direct shipping to Washington retailer endorsement, containing the identity and amount of beer or wine sold directly to licensed Washington retailers. (See RCW 66.24.206 (1)(a), 66.24.270 (2)(a), and 42.56.270.)~~)

(~~k) Financial or proprietary information supplied to the board by a licensed Washington liquor retailer containing the identity and amount of beer or wine purchased directly from a domestic winery, brewery, microbrewery, or a certificate of approval holder with a direct shipping to Washington retailer endorsement. (See RCW 66.24.210, 66.24.290, and 42.56.270.)~~)

(2) The WSLCB is prohibited by statute from disclosing lists of individuals for commercial purposes(~~(. (See))~~ under RCW 42.56.070(~~(.)~~))

(3) ~~Before beginning to make the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The LCB will not charge sales tax when it makes copies of public records).~~

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-110 Review of denials of public records requests.

(1) Any person who objects to the denial of a request for a public re-

cord may petition for prompt review of such decision by ~~((tendering))~~ submitting a written request for review. The written request ~~((shall))~~ must specifically refer to the written statement by the public records ~~((staff member))~~ officer or designee which constituted or accompanied the denial. ~~((Send your))~~ A written petition for review may be sent to:

Public Records Officer(~~(, Public Records Unit)~~)
P.O. Box 43080
Olympia, Washington 98504-3080
~~((360-664-1714~~
~~jdk@lig.wa.gov))~~ 360-664-1693
publicrecords@lcb.wa.gov

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer shall refer it to the administrative director. The administrative director shall immediately consider the matter and either affirm or reverse such denial. The request shall be returned with a final decision, within two business days following the ~~((LCB's))~~ WSLCB's receipt of the request for review of the original denial, or within such other time as the ~~((LCB))~~ WSLCB and the requestor mutually agree to.

(3) If the ~~((LCB))~~ WSLCB denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter(~~(. The attorney general has adopted rules on such requests))~~ as provided in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records request.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-60-040	Operations and procedure.
WAC 314-60-087	Processing public records requests— Electronic records.



Notice of Permanent Rules for changes to Public Records Rules

This explanatory statement concerns the Washington State Liquor Control Board's adoption of rule changes for Public Records Rules.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rulemaking.

The Liquor and Cannabis Board appreciates your involvement in the rule making process. If you have questions, please contact Joanna Eide, Policy and Rules Coordinator, at (360) 664-1622 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting this rule.

Rule changes are needed to implement changes in law due to the passage of EHB 1595 by the 2017 Legislature. The new provisions in law require the agency to either (1) calculate the actual costs of providing public records to requesters for each request, or, if calculating actual costs would be unduly burdensome, (2) charge up to the default amounts in section 3 of EHB 1595. The WSLCB needs changes to rules for costs for public records in order to continue to assess costs for records when appropriate as the Public Records Act (Chapter 42.56 RCW) requires agencies to establish costs for providing public records in rule. This rulemaking incorporates the default amounts as provided in section 3 of EHB 1595. A chapter review for Chapter 314-60 was done in conjunction with the changes needed as a result of the passage of EHB 1595 to ensure public records rules are current and well organized. A review of Chapter 314-60 WAC has not occurred since 2009.

CR-101 – filed July 19, 2017, as WSR 17-15-119.

CR 102 – filed December 6, 2017, as WSR 17-24-120.

Public Hearing held January 10, 2018.



Summary of public comments received on this rule proposal.

Written Comments Received:

Only one written public comment was received related to this rulemaking. The comment was received by attorneys on behalf of Costco that proposed expanding subsection (1)(i) in the proposed rules to encompass all licensees or entities that submit protected materials to the Board:

On behalf of Costco Wholesale Corp., please accept these comments to the Board's proposed Public Records Rules, CR102 # 17-26. Specifically, we propose expanding subsection (i) of WAC 314-60-100 to encompass all of the licensees or entities that submit protected materials to the Board.

In relevant part, the proposed rule currently reads:

Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by WSLCB for inspection and copying:

- ...
- (i) Financial or proprietary information supplied to the board by a domestic winery, brewery, or microbrewery, acting as its own distributor, or certificate of approval holder with a direct shipping to Washington retailer endorsement, containing the identity and amount of beer or wine sold directly to licensed Washington retailers. (See RCW 66.24.206 (1)(a), 66.24.270 (2)(a), and 42.56.270.)*

As drafted, this language addresses submissions of protected material for only some licensees (wineries, breweries, microbreweries, or COAs). However, a number of other licensees furnish similar reports to the Board. For example, spirits retailers must furnish similar information to the Board. See RCW 66.24.630(2)(b) (reporting requirement for spirits retailers on quantity of spirits sold and identity of customers). There appears to be no reason to limit the exemption to only the currently identified license types.

To avoid needing to revise this subsection to reflect every new requirement to furnish protected information to the Board, we propose the following revision:

- (i) Financial or proprietary information supplied to the board by any entity or licensee pursuant to a request from the Board or a requirement to submit such information, such as information about a domestic winery, brewery, or microbrewery, distillery, or craft distillery acting as its own distributor, or certificate of approval holder with a direct shipping to Washington retailer endorsement, or a spirits retailers, containing the identity and amount of spirits,*



Washington State Liquor and Cannabis Board

beer or wine sold directly to licensed Washington retailers. (See RCW ~~66.24.206 (1)(a), 66.24.270 (2)(a), and 42.56.270.~~)

WSLCB response: The information the comment asks to be listed as exempt in the rule is disclosable, although the WSLCB would likely redact account numbers from those documents if they were included. The statutes cited in the comment require reporting and that information be provided, but there is not a statement in the cited statutes that the information is exempt from disclosure. RCW 42.56.270(10)(a) is in the public records laws, but refers to financial info provided by applicants for licenses, not reports they file afterwards. All of the other exemptions in RCW 42.56.270 are specific to the type of license being applied for, such as subsections (24), (25) (27) and (28) which relate to marijuana. Because no exemption applies to the disclosure of the records that the commenter is referring to, the WSLCB would be obligated to disclose this information and the rules should be consistent with that.

Was the comment reflected in the final rule? No, though minor changes were made to remove subsections that contained language relating to exemptions that already exist in the Public Records Act, which were not needed to be included in WAC 314-60-100(1) since the rule is intended to detail exemptions from disclosure that appear outside the Public Records Act.

Public Hearing Comments:

No public testimony was offered at the public hearing.

WAC Changes from Proposed Rules (CR-102) to the Rules as Adopted:

Minor adjustments were made to the proposed rules prior to requesting adoption. Technical changes were made to remove exemptions to disclosure that no longer apply or are already covered by exemptions included in the Public Records Act (PRA). Subsection (1) of WAC 314-60-100 states that “requesters should be aware of” other exemptions outside the PRA that restrict availability of records. After reviewing the laws cited in proposed new language of subsections (1)(j) and (k) as filed with the CR-102, the cited sections of the liquor act provided for record-keeping but did not provide an exemption from disclosure of those records that differs from what is provided in the PRA or other subsections of the proposed rule. For this reason, these subsections were not needed and were removed from the proposed rules prior to adoption.



Washington State
Liquor and Cannabis Board

Date: February 7, 2018

To: Jane Rushford, Board Chair
 Ollie Garrett, Board Member
 Russ Hauge, Board Member

From: Joanna Eide, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
 Peter Antolin, Deputy Director
 Justin Nordhorn, Chief of Enforcement
 Becky Smith, Licensing Director
 Karen McCall, Agency Rules Coordinator
 Melissa Norton, Public Records Officer

Subject: Approval of final rules (CR 103) for changes to Public Records Rules.

At the Board meeting on February 7, 2018, the Rules Coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for changes to Public Records Rules, including a chapter review of chapter 314-60 WAC.

The Board was briefed on the rule making background and public comment for this rule making. An issue paper and text of the rules are attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments and the Rules Coordinator will file the rules with the Office of the Code Reviser. The effective date will be 31 days after filing, on March 8, 2018.

_____ Approve	_____ Disapprove	_____	_____
		Jane Rushford, Chair	Date
_____ Approve	_____ Disapprove	_____	_____
		Ollie Garrett, Board Member	Date
_____ Approve	_____ Disapprove	_____	_____
		Russ Hauge, Board Member	Date

Attachment: Issue Paper

Issue Paper

Marijuana Advertising Rules

Date: February 7, 2018

Presented by: Joanna Eide, Policy and Rules Coordinator

Description of the Issue

The purpose of this issue paper is to recommend that the Washington State Liquor and Cannabis Board (WSLCB) proceed with final rule making and adopt changes to advertising rules in Chapter 314-55 WAC as a result of the passage of ESSB 5131 during the 2017 Legislative Session.

Why is rule making necessary?

The Legislature made significant changes to advertising restrictions and requirements for marijuana licensees in RCW 69.50.369 with the passage of ESSB 5131, which became effective on July 23, 2017. Guidance and information on the changes to the law was shared with licensees and stakeholders and was posted on the WLSLCB's website in advance of the effective date of the changes to the law. While rulemaking did not delay the effective date of the new changes to advertising restrictions and requirements, rule changes in Chapter 314-55 WAC are needed to provide further clarification to the new requirements and to adhere to legislative direction included in ESSB 5131. A separate rulemaking for other changes to cannabis rules needed as a result of changes made in the 2017 Legislative Session is underway and the escalating penalty provisions related to advertising violations required under ESSB 5131 will be handled in that separate rulemaking.

Public Comment

Over 20 written comments were received and 5 people testified at the public hearing, almost all of which had also submitted written comments. Comments received are summarized in the Concise Explanatory Statement, prepared under RCW 34.05.325 accompanying this issue paper.

What changes are being proposed?

Amendatory Section. WAC 314-55-155, Advertising.

Language stating that the requirements in WAC 314-55-155 apply in addition to the requirements set forth in RCW 69.50.369. Many of the proposed changes to rule reiterate the language in statute to attempt to have a holistic view of advertising restrictions in the rule. The rule organization is changed to first list general advertising restrictions for all marijuana advertising, then list those restrictions that apply to outdoor advertising and advertisements of marijuana products. Proposed changes to rule language for clarifying changes beyond those included in statute include the following:

- Clarifying that the minimum distance of 1,000 feet for advertisements is reduced for licensees that are located within that minimum distance consistent with local ordinances that reduce the buffer.
- Examples of language that may be used to state that marijuana products may be purchased or possessed only by persons 21 years of age or older as required by RCW 69.50.369.
- Clarification on what constitutes a prohibited depiction of plants or products on outdoor advertising under RCW 69.50.369.
 - A depiction of a marijuana plant means an image or visual representation of a cannabis leaf, plant, or the likeness thereof that explicitly suggests or represents a cannabis leaf or plant.
 - A depiction of a marijuana product means an image or visual representation of usable marijuana, marijuana-infused products, or marijuana concentrates, or an image that indicates the presence of a product, such as smoke, etc.
- Clarifying what constitutes stating the location of the business on outdoor signs/advertisements. Includes allowances for physical address or location, directional information, website address, email address or phone number.
- Clarification on what information constitutes “identifying the nature of the business” on outdoor signs/advertisements.
- Adjustments to language to make it clear that outdoor double-sided signs or signs with text visible on opposite sides are permissible and count as a single sign so long as the sign is contained in or affixed to a single structure.
- Clarification/definition on what constitutes an “adult only facility” and thereby exempt from certain restrictions on outdoor advertising with limitations.
- Clarification that a sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed for business, the hours of operation, that the licensed location has an ATM inside, or other similar informational signs not related to the product or services of the business is not considered advertising for the purposes of this section.
- Clarification that “Adopt-a-Highway” signs erected by the Washington State Department of Transportation (WSDOT) under a current valid sponsorship with the WSDOT are not considered advertising for the purposes of this section.
- Clarification that warning statements required under WAC 314-55-155 apply to all advertisements of marijuana businesses or marijuana products except for outdoor advertisements. Additional technical change to require minimum type size not less than 10% of the largest type used in the advertisement to ensure warnings are adequately visible and to support the intent of the warning statements being present. This minimum size

type requirement mirrors requirements for political ads by the Public Disclosure Commission.

- Definition of “adult only facility” as used in WAC 314-55-155 and RCW 69.50.369 as a definition of the term was not included in the legislative changes to law.
- Definition of “billboard” to ensure the intent of the Legislature is carried out in statute and rule requirements. The WSLCB surveyed sizes of billboards present in the current advertising industry and reviewed RCW 17.04.070 to determine the proposed definition. “Billboard” is defined as “a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of five feet in height by eleven feet in width.”
- Definition of “off-premises sign” to ensure the term “billboard” is clear for licensees and Enforcement. “Off-premises sign” means “a sign relating, through its message and content, to a business activity, use product, or service not available on the premises upon which the sign is erected.”

Were there changes to the language as proposed in the CR-102?

Technical and clarifying changes that are not substantially different from the proposed rules as filed in the CR-102 were made prior to the version as presented for the CR-103. These changes were made in direct response to comments received and seek to further clarify rule provisions. These changes are detailed below by underlining and strikethroughs on language changed or added after the CR-102 was filed:

- **In subsection (2)(a)(i):** All text on outdoor signs, including billboards, ~~are is~~ limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.
- **In subsection (2)(a)(ii):** No outdoor advertising signs, including billboards, may contain depictions of marijuana plants or marijuana products. Logos or artwork that do not contain depictions of marijuana plants or marijuana products as defined in this section are permissible.
- **In subsection (2)(e):** A sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed for business, the hours of operation, ~~or~~ that the licensed location has an ATM inside, or other similar informational signs not related to the products or services of the marijuana business are not considered advertising for the purposes of this section.
- **In subsection (3):** Advertising ~~or signs~~ placed on windows within the premises of a licensed marijuana retail store ~~that may be visible outside the premises~~ facing outward must meet the requirements for outdoor advertising as provided in RCW 69.50.369 and this section.

- **In subsection (7)(b):** "Billboard" means a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of ~~ten~~ five feet in height by ~~twenty~~ eleven feet in width.

Attachment: Proposed Rules

WAC 314-55-155 Advertising. ~~((1) Advertising by retail licensees.~~ The WSLCB limits each retail licensed premises to a maximum of two separate signs identifying the retail outlet by the licensee's business name or trade name. Both signs must be affixed to the building or permanent structure and each sign is limited to sixteen hundred square inches.

~~(2) General.~~) The following provisions apply in addition to the requirements and restrictions in RCW 69.50.369.

(1) Advertising generally. The following requirements apply to all advertising by marijuana licensees in Washington state.

(a) All marijuana advertising and labels of usable marijuana, marijuana concentrates, and marijuana-infused products sold in the state of Washington must not contain any statement, or illustration that:

~~((a))~~ (i) Is false or misleading;

~~((b))~~ (ii) Promotes over consumption;

~~((c))~~ (iii) Represents the use of marijuana has curative or therapeutic effects;

~~((d))~~ (iv) Depicts a child or other person under legal age to consume marijuana, or includes:

~~((i))~~ (A) The use of objects, such as toys, inflatables, movie characters, ~~((e))~~ cartoon characters suggesting the presence of a child, or any other depiction or image designed in any manner to be likely to be appealing to youth or especially appealing to children or other persons under legal age to consume marijuana; or

~~((ii))~~ (B) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

~~((3))~~ (b) No ~~((licensed))~~ marijuana ~~((producer, processor, or retailer))~~ licensee shall place or maintain, or cause to be placed or maintained, an advertisement of a marijuana business or marijuana product, including marijuana concentrates, usable marijuana, or ~~((a))~~ marijuana-infused product:

(i) In any form or through any medium whatsoever ~~((+~~

~~((a))~~ within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older unless the one thousand minimum distance requirement has been reduced by ordinance in the local jurisdiction where the licensed retailer is located and the licensed retailer is located within one thousand feet of a restricted location listed in this paragraph;

~~((b))~~ (ii) On or in a private vehicle, public transit vehicle ~~((e))~~, public transit shelter, bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location; ~~((e)~~

~~((c) On or in a publicly owned or operated property.)~~

(c) All advertising for marijuana businesses or marijuana products, regardless of what medium is used, must contain text stating that marijuana products may be purchased or possessed only by persons twenty-one years of age or older. Examples of language that conforms to this requirement include, but are not limited to: "21+," "for use by persons 21 and over only," etc.

(d) A marijuana licensee may not engage in advertising or marketing that specifically targets persons residing out of the state of Washington.

(2) **Outdoor advertising.** In addition to the requirements for advertising in subsection (1) of this section, the following restrictions and requirements apply to outdoor advertising by marijuana licensees:

(a) Except for the use of billboards as authorized under RCW 69.50.369 and as provided in this section, licensed marijuana retailers may not display any outdoor signage other than two separate signs identifying the retail outlet by the licensee's business name or trade name, stating the location of the business, and identifying the nature of the business. Both signs must be affixed to a building or permanent structure and each sign is limited to sixteen hundred square inches.

(i) All text on outdoor signs, including billboards, is limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.

(ii) No outdoor advertising signs, including billboards, may contain depictions of marijuana plants or marijuana products. Logos or artwork that do not contain depictions of marijuana plants or marijuana products as defined in this section are permissible.

(A) A depiction of a marijuana plant means an image or visual representation of a cannabis leaf, plant, or the likeness thereof that explicitly suggests or represents a cannabis leaf or plant.

(B) A depiction of a marijuana product means an image or visual representation of usable marijuana, marijuana-infused products, or marijuana concentrates, or an image that indicates the presence of a product, such as smoke, etc.

(iii) Stating the location of the business may include information such as the physical address or location, directional information, web site address, email address, or phone number of the licensed business.

(iv) Identifying the nature of the business may include information related to the operation of the business, what the business is engaged in, or the goods the business offers for sale.

(v) Double-sided signs or signs with text visible on opposite sides are permissible and count as a single sign so long as the sign is contained in or affixed to a single structure.

(b) No marijuana licensee may use or employ a commercial mascot outside of, and in proximity to, a licensed marijuana business.

(c) Outdoor advertising is prohibited on signs and placards in arenas, stadiums, shopping malls, fairs that receive state allocations, farmers markets, and video game arcades, whether any of the foregoing are open air or enclosed, but not including any such sign or placard located at an adult only facility.

(d) The restrictions in this section and RCW 69.50.369 do not apply to outdoor advertisements at the site of an event to be held at an adult only facility that is placed at such site during the period the facility or enclosed area constitutes an adult only facility, but must not be placed there more than fourteen days before the event, and that does not advertise any marijuana product other than by using a brand name, such as the business or trade name or the product brand, to identify the event. Advertising at adult only facilities must not be visible from outside the adult only facility.

(e) A sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed

for business, the hours of operation, that the licensed location has an ATM inside, or other similar informational signs not related to the products or services of the marijuana business are not considered advertising for the purposes of this section.

(f) "Adopt-a-Highway" signs erected by the Washington state department of transportation under a current valid sponsorship with the department of transportation are not considered advertising for the purposes of this section.

(3) Advertising placed on windows within the premises of a licensed marijuana retail store facing outward must meet the requirements for outdoor advertising as provided in RCW 69.50.369 and this section.

(4) Promotional items such as giveaways, coupons, and distribution of branded or unbranded merchandise are banned.

(5) Marijuana retail licensees holding a medical marijuana endorsement may donate product to qualifying patients or designated providers who hold a valid recognition card. Retail licensees may not advertise "free" or "donated" product.

(6) Except for outdoor advertising under subsection (2) of this section, all advertising must contain the following warnings that must be in type size at least ten percent of the largest type used in the advertisement:

(a) "This product has intoxicating effects and may be habit forming.";

(b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

(c) "There may be health risks associated with consumption of this product."; and

(d) "For use only by adults twenty-one and older. Keep out of the reach of children."

(7) For the purposes of this section, the following definitions apply:

(a) "Adult only facility" means:

(i) A location restricted to persons age twenty-one and older by the WSLCB or classified by the WSLCB as off limits to persons under twenty-one years of age; or

(ii) A venue restricted to persons age twenty-one and older and where persons under twenty-one years of age are prohibited from entering or remaining, including employees and volunteers.

(b) "Billboard" means a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of five feet in height by eleven feet in width.

(c) "Off-premises sign" means a sign relating, through its message and content, to a business activity, product, or service not available on the premises upon which the sign is erected.



Notice of Permanent Rules for Marijuana Advertising Rules

This explanatory statement concerns the Washington State Liquor Control Board's adoption of amendments to marijuana advertising rules.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rulemaking.

The Liquor and Cannabis Board appreciates your involvement in the rule making process. If you have questions, please contact Joanna Eide, Policy and Rules Coordinator, at (360) 664-1622 or e-mail at rules@lcb.wa.gov.

Background and reasons for adopting this rule.

The Legislature made significant changes to advertising restrictions and requirements for marijuana licensees in RCW 69.50.369 with the passage of ESSB 5131, which became effective on July 23, 2017. Guidance and information on the changes to the law was shared with licensees and stakeholders and was posted on the WLSCB's website in advance of the effective date of the changes to the law. While rulemaking did not delay the effective date of the new changes to advertising restrictions and requirements, rule changes in Chapter 314-55 WAC are needed to provide further clarification to the new requirements and to adhere to legislative direction included in ESSB 5131. A separate rulemaking for other changes to cannabis rules needed as a result of changes made in the 2017 Legislative Session is underway and the escalating penalty provisions related to advertising violations required under ESSB 5131 will be handled in that separate rulemaking.

CR-101 – filed July 19, 2017, as WSR 17-15-120.

CR 102 – filed December 6, 2017, as WSR 17-24-119.

Public Hearing held January 10, 2018.

Summary of public comments received on this rule proposal.

Written Comments Received:

Below is a summary of the comments received as part of this rulemaking.



- 1. Comments were received that the proposed advertising rules changes are too extreme. Virtually all advertising to cannabis consumers happens inside of the cannabis retail store, where persons under 21 are not allowed. There should be no strong limitations on the type of images used in cannabis advertising and packaging. Because of other implemented rules, persons under 21 are not exposed to cannabis advertising, in general. Please allow cannabis consumers like myself to be entertained and amused, and allow cannabis companies to market to us in ways that are culturally appropriate - which includes illustrations of many types.**

WSLCB response: Thank you for your comments.

Was the comment reflected in the final rule? No. Because the changes reflect changes in the law, the rules were not changed as they must be consistent with requirements in the law. Packaging rules are not affected by this rulemaking, but similar restrictions on content on packages/labels already apply under law and rules.

- 2. The rules state not to advertise out of state. The internet is worldwide.**

WSLCB response: Thank you for your comments. The underlying law and the rules state that licensees cannot engage in advertising or marketing that *specifically targets* persons residing outside Washington State. While the commenter is correct that internet websites may be accessed from anywhere, the simple act of posting a website does not specifically target persons outside Washington. Whether persons residing outside Washington are specifically targeted will depend on content, the actions of the licensee, and the placement of the advertising. Examples include placing an advertisement in a newspaper that is based outside Washington or placing a billboard for a Washington licensed business in another state, or language that incites, invites, or targets persons residing outside Washington.

Was the comment reflected in the final rule? No. The comment was already addressed in the rule language.

- 3. Comments were received about images or content that does not necessarily break rule requirements as drafted, but it's not just things that are especially appealing to small children but also what appeals to youth and the promotion of a lifestyle that encourages use. Rules should be adjusted to address this issue.**

WSLCB response: Thank you for your comments. We understand the concerns you raise. We will continue to look into this issue and whether it should be addressed in future rulemaking. What is especially appealing to children may also encompass some of the items you raise in your concerns, but would be addressed on a case by case basis.



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Was the comment reflected in the final rule? No. The WSLCB will keep these comments in mind to determine whether future rule changes may be advisable.

- 4. We suggest defining “*appealing to youth*” and “*especially appealing to children or other persons under legal age*.” These definitions should consider what a youth would normally encounter in their daily lives and restricting “lifestyle” imagery, such as the depiction of young adults in socially exciting or relationally appealing vignettes. These images serve as aspirational messages to youth and support the perceived benefits of “marijuana culture.”**

WSLCB response: Thank you for your comments. We understand the concerns you raise. We will continue to look into this issue and whether it should be addressed in future rulemaking. What is especially appealing to children may also encompass some of the items you raise in your concerns, but would be addressed on a case by case basis.

Was the comment reflected in the final rule? No. The WSLCB will keep these comments in mind to determine whether future rule changes may be advisable.

- 5. Enhance effectiveness of restrictions on outdoor advertising. Much outdoor advertising is visible to youth regardless of placement. While rules limit placing ads near locations frequented by youth to limit exposure to messages that support or normalize marijuana use, outdoor advertising such as billboards will expose youth to these same problematic messages. In addition to proposed restrictions, we recommend requiring all billboard and outdoor sign warning messages to use a standardized font (consider that used on cigarette warning labels, white/ black contrast) and include language that restricts depictions of future THC delivery devices and useable product as the market is innovating faster than the legislative and rule making processes.**

WSLCB response: Thank you for your comments. We understand the concerns you raise. We will continue to look into this issue and whether it should be addressed in future rulemaking. What is especially appealing to children may also encompass some of the items you raise in your concerns, but would be addressed on a case by case basis.

Was the comment reflected in the final rule? No. The WSLCB will keep these comments in mind to determine whether future rule changes may be advisable.

- 6. We recommend billboards in motion (on vehicles, planes, boats) be proactively banned in part because insuring the legibility of warning messages in motion creates potentially insurmountable enforcement challenges. We recommend ride-share options (ex: Lyft, Uber) popular with youth be included in advertising restrictions similar to buses.**



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WSLCB response: Thank you for your comments. Mobile advertisements and transit advertisements are already prohibited under law and rule.

Was the comment reflected in the final rule? Yes. This was already included in proposed rules and the final rules due to its inclusion in state law.

- 7. We recommend that Adopt-a-Highway signage specific to marijuana be considered as advertisement by the LCB and fall under this section that regulates licensees. The signage contradicts common-sense DUI-Cannabis prevention efforts.**

WSLCB response: Thank you for your comments. Adopt-a-Highway signs are not considered advertising by WSDOT. This is also why they are exempted from being considered advertising in the rules. All Adopt-a-Highway signs are reviewed and under the control of WSDOT.

Was the comment reflected in the final rule? No. Because Adopt-a-Highway signs are not considered advertising by WSDOT, the WSLCB took a similar approach in the rules.

- 8. Comments were received regarding the use of informational signs. Retailers use a number of different exterior signs to identify parking and no-parking areas, designate doors where deliveries can be made, direct customers to appropriate entrances, etc. We would like the LCB to include informational signage such as this (on addition to open signs, hours signs and ATM-inside signage) in Section 1e, to exempt them from additional regulation or counting against new sign limits.**

WSLCB response: Thank you for your comments. We will look to clarifying this in the rules as proposed prior to adoption.

Was the comment reflected in the final rule? Yes. Rule language was adjusted to clarify this prior to adoption.

- 9. Clarify Section 2(a) to make clear that store signage and billboards may include logos or artwork, as long as it does not depict marijuana leaves or cannabis plants. We have been told by Enforcement that logos will be allowed, but the draft language is unclear.**

WSLCB response: Thank you for your comments. We will look to clarifying this in the rules as proposed prior to adoption.

Was the comment reflected in the final rule? Yes. Rule language was adjusted to clarify this prior to adoption.



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- 10. Remove language from Section 7(d) which would treat interior signage visible from the street as exterior signage. This should be changed to exempt interior signage which is not placed on the window of the store and intended to serve as an exterior sign. This rule will force many of us to black out or frost our windows, which is less appealing to customers and serves as an invitation for robbery. Please reconsider your approach.**

WSLCB response: Thank you for your comments. We will look to clarifying this in the rules as proposed prior to adoption.

Was the comment reflected in the final rule? Yes. Rule language was adjusted to clarify this prior to adoption.

- 11. We have seen the tobacco industry push advertising aggressively at youth—a practice science has shown necessary to create new generations of smokers. We are concerned about parallels emerging in Washington’s commercial marijuana industry that seem to be taken from “Big Tobacco’s” playbook. We encourage the Board to lean towards more conservative restrictions on advertising especially in this new, and still volatile, marijuana marketplace.**

WSLCB response: Thank you for your comments. We understand the concerns you raise. We will continue to assess advertising restrictions and requirements and will keep your comments in mind.

Was the comment reflected in the final rule? No. The WSLCB will keep these comments in mind to determine whether future rule changes may be advisable.

- 12. Restrict licensees from contracting with private businesses or other private industries or partnering with non-licensed services/products for the purposes of advertising. We recognize the LCB does not have the authority to regulate non-licensed entities. We recommend restricting licensees from contracting with third party entities for the purpose of advertising, or engaging in actions that would cause de-facto non-regulated advertising to occur. (Ex: WeedMaps, Leafly).**

WSLCB response: Thank you for your comments. While you are correct that the WSLCB does not have jurisdiction over unlicensed entities, licensees are responsible for ensuring advertising complies with WSLCB rules and state law even when using third parties.

Was the comment reflected in the final rule? No. Law and rule already require licensees to adhere to requirements regardless of whether the advertising is done through a third party.

- 13. If any advertising is allowed that it should include warning statements and that these statements be specified to be large enough to read from a distance, be**



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in plain black font on a white background, and cover enough of the ad to be visible.

WSLCB response: Thank you for your comments. Warning statements were removed from the requirements for outdoor advertising (two 1600 sq. in. signs and billboards) due to the limitations included in law on content of outdoor signs. Warning statements are still required on all other forms of advertising. Minimum size requirements were added for warning statements.

Was the comment reflected in the final rule? Minimum size requirements were included in the proposed rules and the rules as adopted. Warning statements are not required on outdoor advertising, however, due to the content limitations included in the law for outdoor advertising. See WSLCB response above.

14. Allow pillar signage in instances where a storefront is not visible.

WSLCB response: Thank you for your comments. Pillar signage is only allowed under the law if it is either one of the two allowed 1600 sq. in. signs allowed on the premises, or a billboard, which must be off premises as defined in rule.

Was the comment reflected in the final rule? No. See above explanation in WSLCB response.

15. I wanted to comment on the rule stating we cannot have a cannabis plant on our logo. This seems very short sighted. We have been in business for a year and a half and have grown our brand as well as our logo, pictured below. It seems unfair that a normal business (head shop, smoke shop etc) can have a picture of a marijuana plant or depiction of one in their logo or on their building and we cannot. We sell the products, it makes no sense to hide what we do, let alone have other business not involved in the sale of marijuana be able to have depictions of the plant.

WSLCB response: Thank you for your comments. Restrictions on plants or products in logos or otherwise is only applicable on outdoor signage and advertisements under the law and the rules must be consistent with state law. Logos or other artwork or pictures that include plants or products is permissible on all other forms of advertising.

Was the comment reflected in the final rule? No. See above explanation in WSLCB response.

16. Include a preventative provision for subliminal messages, images, and similar techniques. An example from WAC on Alcohol: WAC 314-52-015 Section 1, sub section (h) - Uses subliminal or similar techniques. "Subliminal or similar techniques" as used in this section, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of



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images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

WSLCB response: Thank you for your comments. We will keep your comments in mind as we continue formulating the regulatory landscape for the marijuana industry and if we begin to see such advertising strategic that become problematic.

Was the comment reflected in the final rule? No.

17. Include a time limit on how long marijuana advertisements can be displayed on billboards.

WSLCB response: Thank you for your comments. Because billboards can stationary, setting a time limit would not be effective for those displays.

Was the comment reflected in the final rule? No. See above explanation in WSLCB response.

18. Comments were received that the definition of billboard is too narrow. A minimum size shouldn't be established.

WSLCB response: Thank you for your comments. A minimum size was included in the definition of billboard based on industry standards and to ensure the legislative intent in the changes to the law is carried out in the rules.

Was the comment reflected in the final rule? No. See above explanation in WSLCB response.

19. A great deal of time and money has been spent complying with the previous rules. The new rules will cost money to remove signage that were allowed by local jurisdiction building codes and ordinances. Signage that existed previously should be "grandfathered."

WSLCB response: Thank you for your comments. The changes to advertising requirements and restrictions occurred when changes to the law by the Legislature became effective on July 23, 2017. Rules cannot supersede laws and must be consistent with law. The rule changes in this rulemaking are to make updates to ensure the rules are consistent with requirements in law and to provide additional clarification and guidance to those requirements in law.

Was the comment reflected in the final rule? No. See above explanation in WSLCB response.



Public Hearing Comments:

Dylan Doty – Lamar Advertising

Mr. Doty stated that he has identified what he hopes is a small issue with the definition of a billboard, pertaining to the size restriction.

Included in the definition, I believe it is 10x20 feet. That does not capture the industry standard for the size of billboards. We would actually prefer to see no size restriction at all. The net effect of this if it were to stay the way it currently is written, is that it would eliminate advertising in a lot of jurisdictions that might not have the size that fits the 10x20 range. We will be submitting comments.

Chris Marr - Consultant

Mr. Marr stated that he had reviewed the rules with several of his clients, and that a lot of his comments were going to be about the issue of interior signage visible from the exterior.

There are a couple other areas that I would like to comment on and that is adding some additional exemptions to Section 2e for ancillary business signage and also allowing for the voluntary posting of prevention signage. We'd request that you allow for directional parking or warning signs such as "no cannabis consumption allowed in the parking lot", which is a warning that often has to be given, to be considered also as non-advertising and exempted from limitation or regulation.

Please add clarifying language to Section 2a(i) stating that logos or artwork are permitted on signage as long it is consistent with the provisions of the following sub addressing marijuana plant depictions. In other words Section 2a(i) is, we think, unnecessarily confusing because it says "only text will be allowed that contains these things", and then in the subsequent reference it says "no marijuana representation". So in our mind you should add, within Section 2a(i), state "logos or artwork are permissible consistent with restrictions below". Again, that is laid out in my written comments.

On regulatory implementation we are encouraged by the Liquor and Cannabis Board's intent to create advertising compliance coordinator position. We think that will go a long way to reducing frustration on the part of licensees and allow a prior approval process before people invest a lot of money in signage. Also, maybe taking the effort to monitor warnings and AVNs in the initial phase to make sure your intent is being carried out, and provide feedback in real time.

I think we need a clear communication of lead-times. Some folks have been told that signs need to be covered as of 2/15. Other have been told we don't have final rules. Once those have been adopted, what is the timeline, and consider the fact that it can take up to 90 days to have a sign designed and manufactured.

Michael Schroeder – Green Owl Media

Mr. Schroeder stated that he works with several farms and retailers in the industry.



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Mr. Schroeder had concerns that the changes were also impacting labels. Section 1a says that “this applies to all marijuana advertising and labels of useable marijuana products”. I want to be certain that, earlier Joanna mentioned that these rules apply only to advertising, but if so the language clearly says labels. So we want that stricken because we are talking about different things. If we are also talking about labels...

Member Hauge stated that labels were not being discussed. Mr. Schroeder asked for clarification about the labels part of the amendatory Section. Member Hauge asked Ms. Eide to respond. Ms. Eide stated that there are restrictions in the rule as far as what does apply to advertising and labels, but these provisions are not new requirements. These are requirements that are already in place for all advertising, packages, and labels.

Mr. Schroeder continued, noting that the language may be limiting in that it basically describes “what is appealing to youth”. That is very, very wide, and enforcement in the LCB has had a lot of different interpretations in different regions. I’d hate to see a space where one part of the state can advertise with pink and blue and another can’t because of interpretation of enforcement.

Lastly, regarding the posting of information at a retailer, I have encountered at a couple of stores that had text as vision blocking. I wanted to know if that would be addressed as signage as well if they had text that was just their brand name or even iteration of the “no open packaging” or things of that nature.

Logan Bowers - Hashtag

Mr. Bowers stated that he thought Brooke and Chris would cover all of the substantive technical issues that affect retailers with advertising.

I’m the guy that just got fined \$1,000 for having a “Black Lives Matter” and “All Races Welcome” sign in my window at my shop in Redmond. I was not originally going to come and speak today, but I received that fine last night at 6:00 p.m. My LCB officer is on the record saying “those signs have to go” which I think is a little absurd. He did also cite me for a sign that I had in the window that described the nature of the business but not the trade name of the business. I know there has been a lot of confusion over, does a sign have to have literally all of those characteristics or can it be the nature of the business or the trade name of the business.

I think my two points here, one, when you are looking at these rules I think you want take an item and ask do we want to be fighting over 1st Amendment issues non-stop or do we want to be focusing on regulatory issues and issues of keeping marijuana out of the hands of kids.

The other thing is, can we come up with a reasonable mechanism to handle enforcement of these issues. Does the LCB really want to be on the record saying that I can’t say all races are welcome in my store? Can we just do that over an email or have



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a discussion? I get that it's complicated, and it's a grey area, we're going to figure out a solution here, but do we have to jump straight to fines in these kinds of circumstances or can we just have an email discussion. I bring that up specifically because I actually just did this dance in August because I was the one that was fined for the mural on the side of my building painted by a local artist, which was subsequently dismissed on appeal.

I commend the agency for the handling of that one because my enforcement agent gave me very advanced warning, we had a discussion about it, I sent an email saying "here's why I think I'm allowed to have it". They had that discussion internally, ultimately they still decided to issue the citation, but there was a long kind of progression and I think there was a recognition that it was a complicated subject. This time around, I had a different location with a different enforcement officer kind of blackened my experience, where now I just get slapped out of nowhere.

Hopefully as you look over these rules you can focus on what really matters and come up with an enforcement policy that I think recognizes the complexities of the situation.

Brooke Davies – C.O.R.E.

Ms. Davies comments on behalf of C.O.R.E., the Cannabis Organization of Retail Establishments, we are a non-profit trade association that represents licensed 502 retailers in the state of Washington. The organization has had the opportunity to review the proposed rules and I will be submitting written comments in more detail later today.

First I want to thank Joanna and the members of the Board for addressing the interior signage issue. That was a major concern of ours which seems to have already been addressed.

A couple other points I'd like to make which have already been made was expanding the language on Section 2e about the incidental business signage. Just hoping that could be expanded a little bit as Chris mentioned.

The other issue was the size requirement on the billboards which was brought up by Lamar. A lot of our members are in urban areas where the billboards are much smaller, so this restricts that and may also cause some unnecessarily large billboards that could be smaller. Thank you for the opportunity to speak today.

WAC Changes from Proposed Rules (CR-102) to the Rules as Adopted:

Technical and clarifying changes that are not substantially different from the proposed rules as filed in the CR-102 were made prior to the version as presented for the CR-103. These changes were made in direct response to comments received and seek to further clarify rule provisions. These changes are detailed below by underlining and strikethroughs on language changed or added after the CR-102 was filed:



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- **In subsection (2)(a)(i):** All text on outdoor signs, including billboards, are is limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.
- **In subsection (2)(a)(ii):** No outdoor advertising signs, including billboards, may contain depictions of marijuana plants or marijuana products. Logos or artwork that do not contain depictions of marijuana plants or marijuana products as defined in this section are permissible.
- **In subsection (2)(e):** A sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed for business, the hours of operation, or that the licensed location has an ATM inside, or other similar informational signs not related to the products or services of the marijuana business are not considered advertising for the purposes of this section.
- **In subsection (3):** Advertising or signs placed on windows within the premises of a licensed marijuana retail store that may be visible outside the premises facing outward must meet the requirements for outdoor advertising as provided in RCW 69.50.369 and this section.
- **In subsection (7)(b):** "Billboard" means a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of ten five feet in height by twenty eleven feet in width.



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Date: February 7, 2018

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Joanna Eide, Policy and Rules Coordinator

Copy: Rick Garza, Agency Director
Peter Antolin, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director
Karen McCall, Agency Rules Coordinator
Peter Corier, Marijuana Examiners Unit

Subject: **Approval of final rules (CR 103) for changes to Marijuana Advertising Rules.**

At the Board meeting on February 7, 2018, the Rules Coordinator requests that the Liquor and Cannabis Board approve the final rulemaking (CR 103) for amendments to marijuana advertising rules in WAC 314-55-155.

The Board was briefed on the rule making background and public comment for this rule making. An issue paper and text of the rules are attached.

If approved, the Rules Coordinator will send an explanation of the rule making to all persons who submitted comments and file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing, on March 8, 2018.

_____ Approve	_____ Disapprove	_____	_____
		Jane Rushford, Chair	Date
_____ Approve	_____ Disapprove	_____	_____
		Ollie Garrett, Board Member	Date
_____ Approve	_____ Disapprove	_____	_____
		Russ Hauge, Board Member	Date

Attachment: Issue Paper

Washington State Liquor and Cannabis Board

Issue Paper

2017 Liquor Legislation Implementation

Date: February 7, 2018

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue

The purpose of this Issue Paper is to request the board approve the final rules (CR 103) to implement 2017 liquor legislation.

Why is rule making necessary?

New rules and revisions to current rules are needed to implement the following legislation that passed during the 2017 legislative session:

- **SHB 1176 Allows a liquor licensee that is allowed to sell growlers of beer and cider to sell growlers of mead.**
- **2SHB 1351 Creates a new off-premises retail license that allows the sale of spirits, beer, and wine at retail in bottles, can, and original containers.**
- **HB 1718 Creates a wine auction permit.**
- **SHB 1902 Creates a caterer's endorsement for a tavern license.**

Public Comment

No comments were received at the public hearing held January 24, 2018. Two written comments were received.

Cindy Zehnder – Vice President – Gordon Thomas Honeywell-GA

Support the revisions to WAC 314-02-092 regarding tastings areas in a combination spirits, beer, and wine off-premises license that was a former beer/wine specialty store license.

LCB response: The requirement for barriers around the tasting areas was removed for licenses that were former beer/wine specialty store licenses.

P. Adam Smith – Vice President, Western Region of the Distilled Spirits Council

Spirits should be allowed to be sold to customers over the internet and delivered by the retail licensee (the same as beer and wine).

LCB response: Revisions were made to allow spirits to be sold to customers over the internet and delivered by the retail licensee.

What changes are being made?

Amended Section WAC 314-02-060 What is a caterer's endorsement? Added a tavern license to this rule. (SHB 1902)

Amended Section. WAC 314-02-061 What is required for offsite storage of liquor under a caterer's endorsement? Added a tavern licensee to this rule. (SHB 1902)

New Section. WAC 314-02-092 What is a combination spirits, beer, and wine license? Created a new section to implement 2SHB 1351.

Amended Section. WAC 314-02-103 What is a wine retailer reseller endorsement? Added the holder of a combination spirits, beer, and wine license to this rule to implement 2SHB 1351.

Amended Section. WAC 314-38-020 Permits – Fees established. Added language for a wine auction permit. (HB 1718)

New Section. WAC 314-38-110 Nonprofit wine auction permit. Created a new section for the wine auction permit to implement HB 1718.

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-060 What is a caterer's endorsement? (1) A spirits, beer, and wine restaurant ~~((and))~~, a beer and/or wine restaurant, and a tavern applicant or licensee may apply for a caterer's endorsement, in order to extend the on-premises license privilege to allow the sale and service of liquor at locations other than liquor licensed premises. See RCW 66.24.420(6) ~~((and))~~, 66.24.320(2), and 66.24.330 for more information about this endorsement.

(2) The annual fee for this endorsement is three hundred fifty dollars.

AMENDATORY SECTION (Amending WSR 09-02-012, filed 12/29/08, effective 1/29/09)

WAC 314-02-061 What is required for ~~((offsite))~~ off-site storage of liquor under a caterer's endorsement? A spirits, beer, and wine restaurant licensee with a caterer's endorsement, ~~((or))~~ a beer and/or wine restaurant licensee with a caterer's endorsement, or a tavern licensee with a caterer's endorsement, may store its alcohol at locations described in RCW 66.24.320, 66.24.330, and 66.24.420 that are not on the licensed premises if the following conditions are met:

(1) The licensee must display the approval letter for storing liquor at each location;

(2) Liquor storage must be within the event location where catering services for events are provided;

(3) If the location is one for which the licensee has an on-going contract or agreement to provide liquor service at catered events, the contract or agreement must include the following:

(a) Names of the parties;

(b) Location and address where on-going liquor catering services are provided;

(c) A sketch and description of the facility that includes where the liquor will be stored, how the liquor will be secured to ensure public safety, and the provisions that restrict access to the liquor storage area to the licensee and the licensee's employees; and

(d) Signatures of the parties.

(4) For locations owned or leased by the licensee and for which the licensee provides liquor service at catered events, the licensee must submit copies of documents that evidence the ownership or leasehold interest.

NEW SECTION

WAC 314-02-092 What is a combination spirits, beer, and wine license? (1) Per RCW 66.24.632, a combination spirits, beer, and wine license is a retail license that allows a licensee to sell beer and wine, including strong beer, at retail in bottles, cans, and original containers for off-premises consumption, and to:

(a) Sell spirits in original containers to consumers for off-premises consumption and to permit holders;

(b) Sell spirits in original containers to retailers licensed to sell spirits for consumption on the premises, for resale at their licensed premises according to the terms of their licenses. No single sale may exceed twenty-four liters; and

(c) Export spirits.

(2) A combination spirits, beer, and wine licensee that intends to sell to an on-premises retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the combination spirits, beer, and wine licensee plans to sell to an on-premises retailer.

(3) A sale by a combination spirits, beer, and wine licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a combination spirits, beer, and wine licensee must abide by RCW 66.24.630.

(4) A combination spirits, beer, and wine licensee must pay to the board seventeen percent of all spirits sales. (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) The board may issue a combination spirits, beer, and wine license:

(a)(i) For premises comprising at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement; and

(ii) To applicants that the board determines will maintain appropriate systems for inventory management, employee training, employee supervision, and physical security of the product.

(b) For premises of a former contract liquor store; or

(c) To a holder of former state liquor store operating rights sold at auction.

(6) A spirits retail licensee may apply for a sampling endorsement to conduct spirits, beer, and wine sampling if they meet the following criteria:

(a) Be a participant in the responsible vendor program;

(b) Advertising:

(i) For combination spirits, beer, and wine retail licensees that are grocery stores, advertising samplings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(ii) For combination spirits, beer, and wine retail licensees that are specialty stores, advertising of sampling may be advertised but not state that sampling is free of charge.

(c) Samplings are to be conducted in the following manner:

(i) Samplings service area and facilities must be located within the licensee's fully enclosed retail area and must be of a size and design that the licensee can observe and control persons in the area;

(ii) The licensee must provide a sketch of the sampling area. For combination spirits, beer, and wine licensees that are grocery stores, fixed or movable barriers are required around the sampling area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol. For combination spi-

rits, beer, and wine licensees that are specialty stores, barriers are not required. The sketch is to be included with the application for the spirits sampling endorsement;

(iii) Each sample may be no more than one-half ounce of spirits, and no more than a total of one and one-half ounces of spirits samples per person during any one visit to the premises. Spirits samples may be altered with mixers, water, and/or ice. For combination spirits, beer, and wine licensees that are grocery stores, beer and wine samples must be two ounces or less, up to a total of four ounces per person during any one visit to the premises. For combination spirits, beer, and wine licensees that are specialty stores, each beer and wine sample must be two ounces or less and no more than ten ounces of beer and/or wine may be provided to a customer during any one visit to the premises;

(iv) For combination spirits, beer, and wine licensees that are grocery stores, the licensee must have food available for the sampling participants;

(v) Customers must remain in the service area while consuming samples;

(vi) All employees serving spirits, beer, or wine during sampling events must hold a class 12 server permit;

(vii) For combination spirits, beer, and wine licensees that are grocery stores, there must be at least two employees on duty when conducting sampling events;

(viii) Sampling activities are subject to RCW 66.28.305 and 66.28.040.

(d) Licensees are required to send a list of scheduled sampling events to their regional enforcement office at the beginning of each month. The date and time for each sampling must be included;

(e) The cost for a beer and wine sampling endorsement is two hundred dollars. There is no charge for a spirits sampling endorsement.

(7) A combination spirits, beer, and wine licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(8) A combination spirits, beer, and wine licensee may sell spirits, beer, and wine over the internet. See WAC 314-03-020 and 314-03-030 regarding internet sales and delivery.

(9) A combination spirits, beer, and wine applicant or licensee that is a grocery store may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

(10) A combination spirits, beer, and wine licensee may apply for an endorsement to sell beer and cider growlers.

(a) Beer and cider must be sold in sanitary containers provided by the purchaser, licensee or the manufacturer and filled by the employee at the time of purchase.

(b) The taps must be located behind a counter where only employees have access or the taps must have locks preventing use unless unlocked and operated by an employee.

(c) Only employees of the licensee are permitted to operate the taps.

(d) All employees operating a tap must hold a class 12 alcohol server permit.

(e) The cost for the endorsement is one hundred twenty dollars.

WAC 314-02-103 What is a wine retailer reseller endorsement?

(1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license ((~~or~~)), the holder of a beer and/or wine specialty shop license, or the holder of a combination spirits, beer, and wine license to allow the sale of wine at retail to on-premises liquor licensees.

(2) For holders of a grocery store license: No single sale to an on-premises liquor licensee may exceed twenty-four liters.

(3) For holders of a beer and/or wine specialty shop license:

(a) No single sale may exceed twenty-four liters, unless the sale is made by a licensee that was formerly a state liquor store or contract liquor store.

(b) May sell a maximum of five thousand liters of wine per day for resale to retailers licensed to sell wine for consumption on the premises.

(4) A grocery store licensee or a beer and/or wine specialty shop licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

(5) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee or a beer and/or wine specialty shop licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee or beer and/or wine specialty shop licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

(6) The annual fee for the wine retailer reseller endorsement for a grocery store licensee is one hundred sixty-six dollars.

(7) The annual fee for the wine retailer reseller endorsement for a beer and/or wine specialty shop licensee is one hundred ten dollars.

(8) Sales made under the reseller endorsement are not classified as retail sales for taxation purposes.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-020 Permits—Fees established. The fees for permits authorized under RCW 66.20.010 are hereby established as follows:

(1) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(1).

(2) The fee for a special permit as authorized by RCW 66.20.010(2) for purchase of five gallons or less is established as five dollars and for purchase of over five gallons is established as ten dollars.

(3) A fee for a banquet permit, as authorized by RCW 66.20.010(3), is established in WAC 314-18-040.

(4) The fee for a special business permit, as authorized by RCW 66.20.010(4), is established in WAC 314-38-010(2).

(5) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(5).

(6) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(6).

(7) A special permit as authorized by RCW 66.20.010(7) shall be issued without charge to those eligible entities.

(8) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(8).

(9) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(9).

(10) The fee of thirty dollars is established for a special permit as authorized by RCW 66.20.010(10).

(11) The fee of seventy-five dollars is established for a special permit as authorized by RCW 66.20.010(11).

(12) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(13).

(13) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(14).

(14) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(15).

(15) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(16).

(16) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(17).

NEW SECTION

WAC 314-38-110 Nonprofit wine auction permit. (1) A nonprofit auction permit is for a nonprofit organization to sell wine through a private auction not open to the public.

(2) The nonprofit organization must complete a nonprofit wine auction permit application and submit the application and fee to the WSLCB.

(a) The date and location of the auction must be specified on the application.

(b) The one-time event fee is twenty-five dollars multiplied by the number of wineries that are selling wine at the auction event.

(c) A list of event attendees must be submitted with the wine auction permit application.

(3) The holder of the permit may conduct wine tastings of the wine to be auctioned at the event.

(4) All wine sold by auction cannot be consumed during the event.

(5) Wine from multiple wineries may be sold at the auction. Each winery must be listed on the application.

(6) The permit must be posted in a conspicuous location at the premises for which the permit was issued during all times the permit is in use.



Washington State
Liquor and Cannabis Board

Date: February 7, 2018

To: Jane Rushford, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Karen McCall, Agency Rules Coordinator

Copy: Rick Garza, Agency Director
Peter Antolin, Deputy Director
Justin Nordhorn, Chief of Enforcement
Becky Smith, Licensing Director

Subject: Approval of final rules (CR 103) to implement 2017 liquor legislation

At the board meeting on February 7, 2018, the rules coordinator requests that the Liquor and Cannabis Board approve the final rules (CR 103) to implement 2017 liquor legislation.

The board was briefed on the rulemaking background and public comment for this rulemaking. An issue paper and the text of the rules is attached.

If approved, the rules coordinator will send an explanation of the rulemaking to all persons who submitted comments. After sending this explanation, the rules coordinator will file the rules with the Office of the Code Reviser. The effective date of the rules will be 31 days after filing.

_____ Approve _____ Disapprove _____
Jane Rushford, Chair Date

_____ Approve _____ Disapprove _____
Ollie Garrett, Board Member Date

_____ Approve _____ Disapprove _____
Russ Hauge, Board Member Date

Attachment: Issue Paper